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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/822,548	04/12/2004	Marc Seghatol	1550.36US03	1792
7590	12/04/2008		EXAMINER	
Brad Pedersen Patterson, Thuente, Skaar & Christensen, P.A. 4800 IDS Center 80 South 8th Street Minneapolis, MN 55402-2100				ART UNIT
				PAPER NUMBER

DATE MAILED: 12/04/2008

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Notification of Non-Compliant Appeal Brief (37 CFR 41.37)</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/822,548	SEGHATOL ET AL.	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

The Appeal Brief filed on 06 October 2008 is defective for failure to comply with one or more provisions of 37 CFR 41.37.

To avoid dismissal of the appeal, applicant must file an amended brief or other appropriate correction (see MPEP 1205.03) within **ONE MONTH or THIRTY DAYS** from the mailing date of this Notification, whichever is longer.

**EXTENSIONS OF THIS TIME PERIOD MAY BE GRANTED UNDER 37 CFR 1.136.**

1.  The brief does not contain the items required under 37 CFR 41.37(c), or the items are not under the proper heading or in the proper order.
2.  The brief does not contain a statement of the status of all claims, (e.g., rejected, allowed, withdrawn, objected to, canceled), or does not identify the appealed claims (37 CFR 41.37(c)(1)(iii)).
3.  At least one amendment has been filed subsequent to the final rejection, and the brief does not contain a statement of the status of each such amendment (37 CFR 41.37(c)(1)(iv)).
4.  (a) The brief does not contain a concise explanation of the subject matter defined in each of the independent claims involved in the appeal, referring to the specification by page and line number and to the drawings, if any, by reference characters; and/or (b) the brief fails to: (1) identify, for each independent claim involved in the appeal and for each dependent claim argued separately, every means plus function and step plus function under 35 U.S.C. 112, sixth paragraph, and/or (2) set forth the structure, material, or acts described in the specification as corresponding to each claimed function with reference to the specification by page and line number, and to the drawings, if any, by reference characters (37 CFR 41.37(c)(1)(v)).
5.  The brief does not contain a concise statement of each ground of rejection presented for review (37 CFR 41.37(c)(1)(vi))
6.  The brief does not present an argument under a separate heading for each ground of rejection on appeal (37 CFR 41.37(c)(1)(vii)).
7.  The brief does not contain a correct copy of the appealed claims as an appendix thereto (37 CFR 41.37(c)(1)(viii)).
8.  The brief does not contain copies of the evidence submitted under 37 CFR 1.130, 1.131, or 1.132 or of any other evidence entered by the examiner **and relied upon by appellant in the appeal**, along with a statement setting forth where in the record that evidence was entered by the examiner, as an appendix thereto (37 CFR 41.37(c)(1)(ix)).
9.  The brief does not contain copies of the decisions rendered by a court or the Board in the proceeding identified in the Related Appeals and Interferences section of the brief as an appendix thereto (37 CFR 41.37(c)(1)(x)).
10.  Other (including any explanation in support of the above items):

See Continuation Sheet.

/Christina Johnson/  
Supervisory Patent Examiner, Art Unit 1791

Continuation of 10. Other (including any explanation in support of the above items):

Each paper of the appeal should indicate the application number 10/822,548 rather than 10/822,538 as indicated on pages 2-18 of the Appeal Brief (see MPEP 1205.02 - "The brief, as well as every other paper relating to an appeal, should indicate the number of the Technology Center (TC) to which the application or patent under reexamination is assigned and the application or reexamination control number.").

With respect to item 2 above, in section III, "Status of Claims," the required statement of the status of Claims 2-32, 34-36, and 38-41 is not present. Since Applicant canceled the claims, an additional statement is suggested: "Claims 2-32, 34-36, and 38-41 were canceled."

With respect to item 5 above, in the Appeal Brief, section VI, the grounds of rejection presented for review includes grounds of rejection not presented in the Office Action mailed 31 October 2007. Specifically, the Appeal Brief, section VI A, indicates the grounds of "Whether claims 1, 33 and 37 are unpatentable for double patenting obviousness over claim 5 of U.S. Patent No. 6,737,619 or claim 10 of U.S. Patent No. 6,254,389 in view of U.S. Patent No. 3,868,513 (Gonser)." The Office Action mailed 31 October 2007 does not include the double patenting rejections of claims 1, 33, and 37 over claim 10 of U.S. Patent No. 6,254,389 in view of Gonser (US Patent No. 3,868,513). The only double patenting rejections in the Office Action mailed 31 October 2007 are:

- Claims 1, 33, and 37 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claim 5 of U.S. Patent No. 6,737,619 B2 in view of Gonser (US Patent No. 3,868,513).
- Claims 1, 33, and 37 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claim 10 of U.S. Patent No. 6,254,389 B1.

An appropriate presentation would indicate only rejections in the Office Action mailed 31 October 2007 are presented for review.

With respect to item 6 above, in the Appeal Brief, section VI, multiple grounds of rejection are argued under the same heading- "The Examiner rejected Claims 1, 33 and 37 as being unpatentable on the grounds of nonstatutory obviousness-type double patenting over claim 5 of U.S. Patent No. 6,737,619 or claim 10 of U.S. Patent No. 6,254,389 in view of U.S. Patent No. 3,868,513 (Gonser)." However, each ground of rejection must be treated under a separate heading. Thus, a separate heading for each ground of double patenting rejections being argued is required (See MPEP 1205.02 - "Each ground of rejection must be treated under a separate heading.").

/P. B./

Examiner, Art Unit 1791